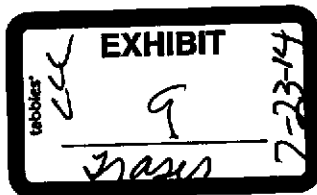


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**From:** Bryan Hebert  
**Sent:** Wednesday, March 04, 2009 1:32 PM  
**To:** Janice McCoy  
**Subject:** ID docs  
**Attachments:** VOTE - REASONS TO SUPPORT SB362.doc; VOTE - TALKING POINTS.doc; VOTE-PROVISIONAL BALLOT PROCESS.doc; VOTE - state law comparison.doc; VOTE - Pre-clearance by DOJ.doc; VOTE - GETTING BC OR ID.doc

for your use, as needed

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**REASONS TO SUPPORT SB362 AS FILED**

- (1) This bill improves security in election process but is not as restrictive as Indiana and Georgia. There is less chance of disenfranchising elderly, poor, or minority voters.
- (2) This is a compromise bill that is basically the same bill that passed the House and the Senate State Affairs Committee last session.
- (3) Senators Fraser, Williams, and Duncan support this version of the bill, and are explaining it to members of Senate and House.
- (4) Potentially gets support from conservative House Democrats (Ritter, Hopson, and Homer) and undecided House Republicans (Merritt and Jones).
- (5) Increases chances of federal pre-clearance (because many forms of ID are acceptable, and provisional ballot procedure is less burdensome).

## TALKING POINTS

### I. THE THREAT OF FRAUD IS REAL

- Deceased voters, felons, duplicate registrations, and non-residents remain on voter rolls (*2007 State Auditor report found over 49,000 of these possible ineligible voters*)
- Fraudulent registration applications are rampant (*over 6,000 applications by non-citizens rejected in Harris County from 2004-2007, and 2008 ACORN registration scandal made national news*)
- Texas Election Administration Management (TEAM) system is improving, but continues to have accuracy problems
- Current election system is inadequate to catch in-person voting fraud

### II. THIS BILL PROTECTS TEXAS VOTERS

- Deters and detects fraud
- Improves and modernizes election procedures
- Protects against fraud enabled by inaccurate registration rolls
- Counts only eligible voters' votes
- Protects public confidence in elections

*(These points are taken directly from Supreme Court opinion describing Indiana's "legitimate state interests")*

### III. THIS BILL REPRESENTS COMPROMISE AND AN ATTEMPT TO ENSURE THAT EVERY ELIGIBLE VOTER CAN VOTE AND THAT ONLY LEGITIMATE VOTES ARE COUNTED

- Allows both photo and non-photo forms of ID
- Not as restrictive as Indiana and Georgia laws (which were both upheld by the federal courts)
- Requires months of statewide voter education efforts before law takes effect

### **TEXAS PROVISIONAL BALLOT PROCESS**

- (1) If a voter is unable to produce ID or is not listed on precinct list, the voter may cast a provisional ballot.
- (2) Provisional ballot is a paper ballot that is placed in a sealed envelope, which the voter signs and on which the voter lists any information which may help determine the voter's eligibility (address, social security number, driver's license number, etc)
- (3) All provisional ballots are placed in a secure ballot box and transferred to the county ballot board when polls close.
- (4) If the election is decided by fewer votes than the number of provisional ballots cast, the provisional ballots are counted.
- (5) The county ballot board and voter registrar examine each provisional ballot and, using county records and other public information, attempt to verify whether the voter is eligible. If deemed eligible, the vote is counted.
- (6) The county ballot board and voter registrar must complete verification within 7 days of the election. The county must notify a voter within 10 days of canvassing the votes whether the voter's provisional ballot was accepted.

	INDIANA LAW	GEORGIA LAW	TEXAS - SB 362	TEXAS - CURRENT LAW
<b>REQUIRED I.D.</b>	<p><b>One photo ID:</b></p> <ul style="list-style-type: none"> <li>state or federal ID that includes name, photo, and expiration date (specific forms of ID not provided)</li> </ul>	<p><b>One photo ID:</b></p> <ul style="list-style-type: none"> <li>driver's license (even if expired)</li> <li>state or federal photo ID</li> <li>local, state, or federal govt employee photo ID</li> <li>U.S. passport</li> <li>military photo ID</li> <li>tribal photo ID</li> </ul>	<p><b>One photo ID:</b></p> <ul style="list-style-type: none"> <li>DPS-issued ID that has not expired in last two years</li> <li>military photo ID</li> <li>citizenship certificate with photo</li> <li>U.S. passport</li> <li>concealed handgun ID</li> <li>state or federal photo ID</li> </ul> <p><b>- OR -</b></p> <p><b>Two non-photo ID:</b> Govt-issued mail or document; Birth certificate; Citizenship papers; Marriage license or divorce decree; Adoption, name change, or sex change court records; Public benefits card; Temporary driving permit; Pilot's license; Library card, Hunting or fishing license</p>	<p>voter registration card</p> <p><b>- OR -</b></p> <p>sign affidavit at polls</p> <p><b>AND</b></p> <ul style="list-style-type: none"> <li>DPS-issued ID (even if expired)</li> <li>any photo ID with name</li> <li>birth certificate</li> <li>citizenship papers</li> <li>U.S. passport</li> <li>govt-issued mail or document</li> <li>other ID prescribed by Sec of State</li> </ul>
<b>EXCEPTIONS TO PHOTO REQUIREMENT</b>	<ul style="list-style-type: none"> <li>indigent</li> <li>religious objection</li> <li>voters in state-licensed care facility</li> </ul>	none	non-photo documents are acceptable	(photo ID not required)
<b>PROVISIONAL BALLOT</b>	If no ID, voter may cast provisional ballot and must return within 10 days with ID for ballot to be counted.	If no ID, voter may cast provisional ballot and must return within 2 days with ID for ballot to be counted.	If no ID, voter may cast provisional ballot, and registrar must confirm eligibility within 7 days	If no ID, voter may cast provisional ballot, and registrar must confirm eligibility within 7 days

HIGHLY CONFIDENTIAL

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<b>REQUIRED VOTER EDUCATION</b>	secretary of state conducts statewide education campaign for voters and poll workers	none	secretary of state conducts statewide education campaign for voters and poll workers	N/A
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## **FEDERAL PRECLEARANCE OF TEXAS VOTER ID LAW REQUIRED**

### WHAT IS PRECLEARANCE?

Section 5 of the Voting Rights Act states that a covered jurisdiction (such as Texas) may not implement a change in its election laws or practices unless the jurisdiction demonstrates the change will be free of any racially discriminatory purpose or effect. The burden is on the state to prove that the change in law will not have a discriminatory impact. Redistricting plans are the most common source of preclearance opinions, but any change in voting is subject to preclearance.

### WHO PROVIDES PRECLEARANCE?

A covered jurisdiction must submit a proposed election law to either the United States Department of Justice - Civil Rights Division for formal approval or to the United States District Court for the District of Columbia for a declaratory judgment that the proposed law is acceptable. Both venues use the same standard of review.

### WHAT IS THE PRECLEARANCE PROCESS?

After passage by the Texas legislature, and before the effective date of the Act, the Texas Secretary of State will submit the appropriate paperwork for preclearance to the DOJ or the Attorney General will file a preclearance action in the DC District Court. The DOJ or Court will conduct a statistical and legal analysis to determine if the proposed law has any racially discriminatory purpose or effect.

### WHAT HAPPENED WITH GEORGIA?

In 2005, Georgia passed a voter ID law that allows only photo ID and requires voter to return within 2 days to confirm identity for provisional ballot. Career attorneys and analysts at DOJ wrote a 50-page memo explaining why the Georgia law was retrogressive and should be denied preclearance. Bush political appointees at the DOJ overruled that determination and granted preclearance. (The 11th Circuit Court later upheld the plan under the standards enumerated by the Supreme Court.)

### THE BOTTOM LINE

Even if the Texas legislature passes a voter ID bill that is signed by the governor, it will not take effect until the attorneys at the DOJ or the judges at the DC District Court determine that minority voters will not be adversely affected by the ID requirements.

The Bush political appointees at the DOJ have been replaced by Obama political appointees, and the career attorneys and analysts that wrote the 2005 memo remain.

If the DOJ or DC Circuit Court grants preclearance, the law is still likely to be challenged in federal court under the more relaxed guidelines established in the Indiana case.